

Hiram Fong then focused on real estate, insurance, and investments, and established a number of successful island firms: Finance Factors, Finance Realty, Finance Home Builders, and Finance Investment, to name a few.

In the Statehood year of 1959, Fong embarked on the second phase of his political career by running for and winning one of the two new United States Senate seats created for the newly established State of Hawaii. He won re-election in 1964 and 1970, and served with honor and distinction, beloved by all in his native Hawaii and beyond, until his retirement on January 2, 1977. At his retirement, Senator Fong was the ranking Republican on the Senate Committee on the Post Office and Civil Service.

But even then, Senator Fong, as he was universally known thereafter with great affection, returned home to his various business enterprises and to the devotion of his expanded family. Well into his nineties, he was a remarkable sight as he strode through downtown Honolulu on his way to and from work, excited by what the day brought and eager to continue his long string of accomplishments. At his death, his body lay in state in Hawaii's State Capitol as whole generations of citizens paid tribute to a remarkable man who led a remarkable life.

It is both fitting and appropriate that we provide this modest memorial, as he would have wished, in order to remember the essence of public service and a life well lived by Hawaii's quintessential native son, Hiram L. Fong.

I would like to thank our House Leadership, Congressman TOM DAVIS, chairman of the House Government Reform Committee, and Congressman HENRY WAXMAN, the committee's ranking member, for their assistance in moving this bill expeditiously to the House floor. I also appreciate the support of my colleagues on this measure.

I am certain that Senator Fong's family and friends, and all of Hawaii, are appreciative of all of your support. Mahalo.

Mr. Speaker, I yield back the balance of my time.

Mr. DENT. Mr. Speaker, I urge all Members to support passage of S. 2089, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. DENT) that the House suspend the rules and pass the Senate bill, S. 2089.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

REMEMBERING THE LIFE OF DANA REEVE

(Mr. LANGEVIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Speaker, I rise to pay tribute to Dana Reeve who passed away last night following a battle with lung cancer.

I am deeply saddened by the loss of my dear friend, and would like to take a moment to reflect on her life. She

faced extraordinary challenges and handled them with the utmost grace, dignity and strength.

When her husband, Chris, was first injured, Dana helped establish the Christopher Reeve Foundation. Recognizing a lack of any place to go for comprehensive information for newly injured patients and their families, she worked tirelessly to establish the Christopher and Dana Reeve Paralysis Resource Center. Since the launch of this center in 2002, it has assisted thousands of spinal cord injured patients and their loved ones in dealing with the many issues and anxieties that come along with such an injury. Dana used her personal experience to improve the quality of life for all people living with paralysis.

This was typical of Dana, to see beyond her own circumstances and find a way to ease the suffering and confusion of others. After her husband's passing, she moved forward with his message of hope and healing. Today, it is up to all of us to continue their legacy. As Chris and Dana would say, let us go forward.

My thoughts and prayers go out to Dana Reeve's family, friends and all those who mourn her. May God bless her.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

The Clerk read as follows:

S. 2271

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006".

SEC. 2. DEFINITION.

As used in this Act, the term "applicable Act" means the Act entitled "An Act to extend and modify authorities needed to combat terrorism, and for other purposes." (109th Congress, 2d Session).

SEC. 3. JUDICIAL REVIEW OF FISA ORDERS.

Subsection (f) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861), as amended by the applicable Act, is amended to read as follows:

"(f)(1) In this subsection—

"(A) the term 'production order' means an order to produce any tangible thing under this section; and

"(B) the term 'nondisclosure order' means an order imposed under subsection (d).

"(2)(A)(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the pro-

duction order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

"(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

"(iii) The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

"(B) A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

"(C)(i) A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

"(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

"(iii) If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

"(D) Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

"(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

"(4) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be

maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

“(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review *ex parte* and in camera any Government submission, or portions thereof, which may include classified information.”.

SEC. 4. DISCLOSURES.

(a) FISA.—Subparagraph (C) of section 501(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(d)(2)), as amended by the applicable Act, is amended to read as follows:

“(C) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.”.

(b) TITLE 18.—Paragraph (4) of section 2709(c) of title 18, United States Code, as amended by the applicable Act, is amended to read as follows:

“(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).”.

(c) FAIR CREDIT REPORTING ACT.—

(1) IN GENERAL.—Paragraph (4) of section 626(d) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d)), as amended by the applicable Act, is amended to read as follows:

“(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for the identity of financial institutions or a consumer report respecting any consumer under this section.”.

(2) OTHER AGENCIES.—Paragraph (4) of section 627(c) of the Fair Credit Reporting Act (15 U.S.C. 1681v(c)), as amended by the applicable Act, is amended to read as follows:

“(4) At the request of the authorized government agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized government agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for information under subsection (a).”.

(d) RIGHT TO FINANCIAL PRIVACY ACT.—

(1) IN GENERAL.—Subparagraph (D) of section 1114(a)(3) of the Right to Financial Pri-

vacy Act (12 U.S.C. 3414(a)(3)), as amended by the applicable Act, is amended to read as follows:

“(D) At the request of the authorized Government authority or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government authority or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the authorized Government authority or the Secret Service of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under this subsection.”.

(2) FEDERAL BUREAU OF INVESTIGATION.—Clause (iv) of section 1114(a)(5)(D) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(D)), as amended by the applicable Act, is amended to read as follows:

“(iv) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under subparagraph (A).”.

(e) NATIONAL SECURITY ACT OF 1947.—Paragraph (4) of section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)), as amended by the applicable Act, is amended to read as follows:

“(4) At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).”.

SEC. 5. PRIVACY PROTECTIONS FOR LIBRARY PATRONS.

Section 2709 of title 18, United States Code, as amended by the applicable Act, is amended by adding at the end the following:

“(f) LIBRARIES.—A library (as that term is defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), the services of which include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally by patrons for their use, review, examination, or circulation, is not a wire or electronic communication service provider for purposes of this section, unless the library is providing the services defined in section 2510(15) (‘electronic communication service’) of this title.”.

This Act shall become effective immediately upon enactment.

□ 1445

The SPEAKER pro tempore (Mr. PUTNAM). Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2271 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of Senate 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006. On December 14 of last year, the House passed the conference report on H.R. 3199, the USA PATRIOT Improvement and Reauthorization Act of 2005, by a strong bipartisan vote of 251-174. Last Thursday, the other body followed the bipartisan lead of this House and approved the conference report by an overwhelming vote of 89-10.

When the House Judiciary Committee unanimously reported the PATRIOT Act a month after the 9/11 attacks, I pledged to vigorously examine its implementation to ensure that enhanced law enforcement authority is required to reduce America's vulnerability that terrorism did not erode our constitutional or civil liberties.

As the historical record makes amply clear, it was the House, led by former majority leader Dick Armey and me, that forcefully insisted that much of the PATRIOT Act's expansion of law enforcement authority sunset without affirmative congressional reauthorization.

These sunsets helped complement aggressive Congressional oversight of the implementation of the PATRIOT Act. The conference report now passed by both houses represents the product of comprehensive bipartisan consideration consisting of legislative and oversight hearings, briefings, and inspector general reports and committee correspondence. This extensive record, a chronology of which I will submit for the RECORD, has demonstrated that the PATRIOT Act has been an effective tool against terrorists and other criminals.

At the same time, intense congressional and public scrutiny has not produced a single substantiated claim that the PATRIOT Act has been misused to violate American civil liberties. However, the conference report contained over 30 important civil liberties amendments and revisions revised to further mitigate the potential for misuse of the PATRIOT Act.

This bill includes three additional clarifications of the conference report to address concerns raised by some Members of the other body.

First, current law does not expressly provide a recipient of a section 215 order or a national security letter the

right to challenge it. The conference report clearly delineated judicial review for such challenges, including the ability of NSL recipients to challenge an accompanying nondisclosure order. S. 2271 would extend the section 215 recipients similar access to judicial review, to challenge and attach the nondisclosure order.

Second, because of national security concerns, the conference report contained language that would allow the government to ask a recipient of one of these national security orders to identify the persons to whom disclosure will be or was made. The Director of National Intelligence expressed concern that without this safeguard, a recipient could disclose the government's investigative efforts to a person with ties to hostile foreign governments or entities.

The conference report permitted the government to determine whether a request is warranted, and if the defendant has made such a request to determine whether the disclosure affected an ongoing investigation. An exception was included for information that might interfere with attorney-client relations, specifically barring the disclosure of the identity of an attorney to whom a recipient planned to disclose. This bill extends the exception to prevent the government from requesting the name of counsels with whom the recipient had already consulted.

Finally, S. 2271 clarifies current law that a library may only be subject to an NSL request if it falls under 18 U.S.C. 2516(15), which defines an electronic communications service provider as any service which provides to users thereof the ability to send or receive wire or electronic communication. This change addresses the potential for misuse alleged by critics of the legislation.

Mr. Speaker, over the last 5 years, the PATRIOT Act has been the focus of virtually unprecedented congressional and public scrutiny. Opponents of this legislation have relied upon exaggeration and hyperbole to distort a demonstrated record of accomplishment and success.

The Justice Department and other agencies have properly used the PATRIOT Act to detect, disrupt and dismantle sales in New York, Virginia and Oregon before they struck. The PATRIOT Act helped tear down the pre-9/11 wall that prevented law enforcement intelligence agencies from sharing critical information necessary to avert terrorist attacks on American soil.

It has become a critical tool of America's law enforcement arsenal and a vital deterrent against terrorist subversion. It upheld our constitutional values, and none of the provisions authorized by the conference report have been held unconstitutional.

Simply stated, the PATRIOT Act has made America safer while safeguarding our civil liberties. The conference report contained provisions to address

claims that the PATRIOT Act might be misused to violate civil liberties, and Senate 2271 contains additional provisions to further allay these concerns. I urge my colleagues to support this bill and look forward to the eminent enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005 into law.

The following material is a chronology of the oversight of the PATRIOT Act from October of 2001 to November of 2005 and a listing of additional civil liberties protections contained in the conference report of H.R. 3119:

OVERSIGHT OF THE USA PATRIOT ACT FROM OCTOBER, 2001, TO NOVEMBER, 2005

1. November 9, 2005, Department of Justice classified briefing for Committee on the Judiciary staff on press accounts of FBI use of NSLs;

2. October 25, 2005, Department of Justice classified briefing for House and Senate Committees on the Judiciary and Committees on Intelligence staff on press accounts of FBI use of NSLs;

3. October 6, 2005, Department of Justice classified briefing for Committee on the Judiciary Members and staff on press accounts of mistakes in FBI applications to the Foreign Intelligence Surveillance Court under the USA PATRIOT Act;

4. July 12, 2005, letter from Assistant Attorney General William Moschella to the House Committee on the Judiciary responding to July 1, 2005, letter regarding use of the USA PATRIOT Act;

5. July 12, 2005, letter from Assistant Attorney General William Moschella to the House Committee on the Judiciary responding to May 19, 2005, letter regarding use of the USA PATRIOT Act;

6. July 11, 2005, letter from Assistant Attorney General William Moschella to Rep. Bobby Scott responding to questions regarding use of the USA PATRIOT Act;

7. July 11, 2005, letter from Assistant Attorney General William Moschella to the House Committee on the Judiciary regarding use of the USA PATRIOT Act;

8. July 5, 2005, letter from FBI Director Mueller to Senate Committee on the Judiciary responding to questions regarding use of the USA PATRIOT Act;

9. July 1, 2005, letter from Assistant Attorney General William Moschella to Rep. Bobby Scott responding to questions regarding use of the USA PATRIOT Act;

10. July 1, 2005, letter from House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

11. June 29, 2005, letter from Assistant Attorney General William Moschella to the Senate Committee on the Judiciary responding to April 5, 2005, letter regarding use of the USA PATRIOT Act;

12. June 10, 2005, House Committee on the Judiciary hearing on reauthorization of the USA PATRIOT Act;

13. June 8, 2005, House Committee on the Judiciary hearing on reauthorization of the USA PATRIOT Act;

14. May 26, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing on Material Witness Provisions of the Criminal Code and the Implementation of the USA PATRIOT Act; Section 505 that Addresses National Security Letters; and Section 804 that Addresses Jurisdiction over Crimes Committed at U.S. Facilities Abroad;

15. May 19, 2005, letter from House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

16. May 10, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing on the prohibition of Material Support to Terrorists and Foreign Terrorist Organizations and on the DOJ Inspector General's Reports on Civil Liberty Violations under the USA PATRIOT Act;

17. May 10, 2005, Senate Committee on the Judiciary hearing on continued oversight of the USA PATRIOT Act;

18. May 5, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing on Section 212 of the USA PATRIOT Act that Allows Emergency Disclosure of Electronic Communications to Protect Life and Limb;

19. May 3, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing on Sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance;

20. April 28, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing: Section 218 of the USA PATRIOT Act—If It Expires Will the "Wall" Return?;

21. April 28, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing: Have Sections 206 and 215 Improved Foreign Intelligence Surveillance Act (FISA) Investigations?;

22. April 26, 2005, letter from Assistant Attorney General William Moschella to Senator Dianne Feinstein responding to April 4, 2005, letter regarding use of the USA PATRIOT Act;

23. April 26, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing: Have Sections 204, 207, 214, and 225 of the USA PATRIOT Act, and Sections 6001 and 6002 of the Intelligence Reform and Terrorism Prevention Act of 2004, improved FISA Investigations;

24. April 21, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing on Crime, Terrorism, and the Age of Technology—(Section 209: Seizure of Voice-Mail Messages Pursuant to Warrants; Section 217: Interception of Computer Trespasser Communications; and Section 220: Nationwide Service of Search Warrants for Electronic Evidence);

25. April 20, 2005, Senate Subcommittee on Terrorism, Technology, and Homeland Security hearing: A Review of the Material Support to Terrorism Prohibition;

26. April 19, 2005, House Subcommittee on Crime, Terrorism, and Homeland Security hearing on Sections 203(b) and (d) of the USA PATRIOT Act and their Effect on Information Sharing;

27. April 6, 2005, House Committee on the Judiciary hearing with Attorney General Gonzales;

28. April 5, 2005, Senate Committee on the Judiciary hearing on Oversight of the USA PATRIOT Act;

29. March 22, 2005, Department of Justice law enforcement sensitive briefing for Committee on the Judiciary Members and staff on the use of FISA under the USA PATRIOT Act;

30. September 22, 2004, Senate Committee on the Judiciary hearing: A Review of Counter-Terrorism Legislation and Proposals, Including the USA PATRIOT Act and the SAFE Act May 5, 2004, Senate Committee on the Judiciary hearing: Aiding Terrorists—A Review of the Material Support Statute;

31. May 20, 2004, Senate Committee on the Judiciary hearing on FBI Oversight: Terrorism;

32. April 14, 2004, Senate Committee on the Judiciary hearing on Preventing and Responding to Acts of Terrorism: A Review of Current Law;

33. February 3, 2004, Department of Justice briefing for House Committee on the Judiciary staff on its views of S. 1709, the "Security and Freedom Ensured (SAFE) Act of

2003," and H.R. 3352, the House companion bill, as both bills proposed changes to the USA PATRIOT Act;

34. November 20, 2003, request by Chairmen Sensenbrenner and Hostettler to GAO requesting a study of the implementation of the USA PATRIOT Act anti-money laundering provisions. Report was released on June 6, 2005;

35. October 29, 2003, Department of Justice classified briefing for Committee on the Judiciary Members and staff on the use of FISA under the USA PATRIOT Act;

36. September 10, 2003, Senate Subcommittee on Terrorism, Technology, and Homeland Security hearing on Terrorism: Two Years After 9/11, Connecting the Dots;

37. August 7, 2003, Department of Justice briefing for House Committee on the Judiciary Members and staff regarding the long-standing authority for law enforcement to conduct delayed searches and collect business records and the effect of the USA PATRIOT Act on those authorities;

38. July 23, 2003, Senate Committee on the Judiciary hearing on Law Enforcement and Terrorism;

39. June 13, 2003, letter from Assistant Secretary for Legislative Affairs at the Department of Homeland Security, Pamela J. Turner, to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

40. June 10, 2003, Department of Justice classified briefing for Committee on the Judiciary Members and staff on the use of FISA under the USA PATRIOT Act;

41. June 5, 2003, House Committee on the Judiciary hearing on the U.S. Department of Justice, including its use of the provisions authorized by the USA PATRIOT Act;

42. May 20, 2003, House Subcommittee on the Constitution hearing: Anti-Terrorism Investigations and the Fourth Amendment After September 11th: Where and When Can Government Go to Prevent Terrorist Attacks;

43. May 13, 2003, letter from Acting Assistant Attorney General, Jamie Brown to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

44. April 1, 2003, letter from the House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

45. October 9, 2002, Senate Subcommittee on Terrorism, Technology, and Homeland Security hearing: Tools Against Terror: How the Administration is Implementing New Laws in the Fight to Protect our Homeland;

46. September 20, 2002, letter from Assistant Attorney General, Daniel Bryant, to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

47. September 10, 2002, Senate Committee on the Judiciary hearing on the USA PATRIOT Act in Practice: Shedding Light on the FISA Process;

48. August 26, 2002, letter from Assistant Attorney General, Daniel Bryant, to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

49. July 26, 2002, letter from Assistant Attorney General, Daniel Bryant to the House Committee on the Judiciary responding to questions regarding the USA PATRIOT Act;

50. July 25, 2002, Senate Committee on the Judiciary hearing on the Department of Justice, including its implementation of the authorities granted by the USA PATRIOT Act;

51. June 13, 2002, letter from the House Committee on the Judiciary to the Attorney General regarding use of the USA PATRIOT Act;

52. April 17, 2002, Senate Subcommittee on Administrative Oversight and the Courts

hearing: "Should the Office of Homeland Security Have More Power? A Case Study in Information Sharing;"

53. December 6, 2001, Senate Committee on the Judiciary hearing on DOJ Oversight: Preserving our Freedoms While Defending Against Terrorism;

54. December 4, 2001, Senate Committee on the Judiciary hearing on DOJ Oversight: Preserving our Freedoms While Defending Against Terrorism;

55. November 28, 2001, Senate Committee on the Judiciary hearing on DOJ Oversight: Preserving our Freedoms While Defending Against Terrorism; and

56. October 3, 2001, Senate Subcommittee on the Constitution, Civil Rights, and Property Rights hearing: Protecting Constitutional Freedoms in the Face of Terrorism.

ADDITIONAL CIVIL LIBERTIES PROTECTIONS CONTAINED IN THE CONFERENCE REPORT ON H.R. 3199, THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005

The conference report contains the following additional safeguards:

Requires a description of a specific target in both the application and the court order for "roving wiretaps," and specific facts in the application that show that the target's actions may thwart surveillance efforts—if the target's true identity is unknown.

Requires that the FBI must notify the court within 10 days after beginning surveillance of any new phone for all "roving wiretaps." The notice must include the total number of electronic surveillances conducted under the court's multipoint order.

Includes new reporting requirements to Congress, including new details about the use of "roving" authority.

Requires that for delayed notice search warrants that notice of the search be given within 30 days of its execution, unless the facts justify a later date, eliminating the open-ended period of delay permissible under current law.

Allows for extensions of the delay period in giving notice of a search, but only upon an updated showing of the need for further delay. Also, it limits any extension to 90 days or less, unless the facts of the case justify a longer delay.

Adds new reporting requirements to Congress on the use of delayed notice search warrants.

Requires for section 215 orders, relating to investigator's access to business records, a statement of facts showing reasonable grounds to believe that the records or other things sought are relevant to an authorized investigation to protect against international terrorism or espionage. This provides additional safeguards to the original USA PATRIOT Act, which required the government only to certify that the records at issue were sought for an authorized investigation—without any factual showing.

Requires a three part test for section 215 orders that ensures the records are sought for: a foreign power or an agent of a foreign power; the activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of an authorized investigation. This test combined with the newly required statement of facts should mitigate concerns of government "fishing expeditions," while maintaining the flexibility for legitimate terrorism investigations.

Explicitly guarantees the right for recipients of section 215 orders to consult legal counsel and seek judicial review.

Requires high level approval by either the FBI Director, Deputy Director, or Executive Assistant Director for requests for certain

records, including library records, medical records, educational records, and tax return records.

Limits the scope of section 215 orders to materials that could be obtained via grand jury subpoena or a similar court order for the production of records.

Limits retention, and prohibits dissemination, of information concerning U.S. persons.

Requires that the DOJ Inspector General conduct two separate audits of the FBI's use of section 215 orders that will examine: any noteworthy facts or circumstances relating to 215 orders, including any improper or illegal use of the authority; the manner in which such information is collected, retained, analyzed, and disseminated by the FBI; and an assessment of whether the minimization procedures protect the constitutional rights of United States persons.

Requires enhanced reporting to Congress of section 215 orders, including a breakdown of its use to obtain library records, medical records, educational records, and other sensitive types of records.

Requires public reporting of the aggregate use of section 215 orders.

Allows recipients of National Security Letters (NSLs) to consult with legal counsel.

Creates an explicit right to judicial review of NSL requests.

Permits a reviewing court to modify or set aside an NSL if compliance would be unreasonable, oppressive, or otherwise unlawful—this is the same standard used to modify or quash a subpoena in a criminal case.

Provides for judicial review of the non-disclosure requirements.

Adds a "knowing and willfully" standard that must be proven before someone who discloses an NSL can be subject to a 1-year misdemeanor offense.

Requires the DOJ IG to conduct two comprehensive audits of the FBI's use of NSLs.

Requires the Attorney General and the Director of National Intelligence to submit to Congress a report on the feasibility of applying minimization procedures to NSLs to ensure the protection of constitutional rights of U.S. persons.

Adds a new "sunshine" provision that requires annual public reporting on NSLs.

Provides for expanded congressional access to significant FISA reporting currently provided to the Intelligence Committees.

Includes a provision requiring the FISA Court to submit its rules & procedures to Congress.

Creates new reporting requirements for the use of emergency authorities under FISA.

Requires new reporting on the use of emergency disclosures of communications information made under section 212 of the USA PATRIOT Act.

Requires the Department of Justice to submit a report to Congress on the Department's data-mining activities.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker and my colleagues, let me just begin by pointing out that in the dissent from the bill reported, there are six precise examples of when the PATRIOT Act has been abused so that no one will be able to say that they don't know where they are. They are on page 2 and 3 of the dissents that have been filed with the committee.

What we have, we have passed the conference report already. It was passed on December 14, 2005. Because of the other body, and the serious objections that they have raised, we are getting now to three other points that are

being raised. Two of the points are the basis of my remarks this afternoon.

The first I would like you to know about in S. 2271 is that amazingly enough, after all the debate, this measure that we are considering today makes section 215 intelligence orders for any tangible thing harder to challenge in court than the current conference report which allows a recipient to challenge the gag order immediately. This measure before us that we will be voting on would make the recipient wait a year, but then to make it really worse, rather than the reviewing court immediately allowing the gag order, allowing the gag as the government's *carte blanche* assertion of national security is conclusive.

We have added two things. We make the assertion of national security conclusive, plus we make the person that challenges it not able to immediately go to court. This is a setback.

The second thing that we do is that we add no meaningful protection for library records. That is to say that the present conference reports allow immediate challenge. What we do is that according to the National Association of Library Records, we make the protection for library records exempt only if, the national security letters, they don't offer Internet access. But the American Library Association puts the number of libraries without Internet access at nearly zero.

What we have done is create a fig leaf that really does nothing to give the meaningful protection that the library association has requested and that we tried to get through in our legislation. So it is with great reluctance that even on two out of the three measures that are before us in this very small bill, we find that this is unsupportable.

In addition, finally, what this measure doesn't do is address any of the core problems with the PATRIOT Act, the main one being that we have asked for moderate changes that would have ensured that these extraordinary new powers are directed solely at terrorists or to those associated with terrorists, and this measure fails to do that. For those reasons, I am unable to support this measure and urge that it be defeated.

There is no more difficult task we have as legislators than balancing our Nation's need for security against our citizens' civil liberties. Nearly five years after the tragedy of September 11, and in the midst of a war against terror without any clear endpoint, it is increasingly clear that we are failing in that task.

We failed when we rushed through the first PATRIOT Act while the wreck of the World Trade Center was still smoldering. We failed when we refused to address the repeated civil liberties abuses by our own government, including the warrantless surveillance of U.S. citizens. And today, we are failing yet again, by taking up S. 2771. Not only is the bill substantively dangerous, it does nothing to respond to the serious flaws in the conference report.

First, the bill is dangerous because it makes it practically impossible to challenge the gag

orders that come with secretive 215 orders. It would not only make the recipient wait at least one full year before challenging a gag order, it deems government certifications concerning possible harm to national security to be "conclusive." This is far worse than what is proposed by the conference report which would allow the FISA court to ensure that the law and the Constitution are not violated.

Second, the bill operates as a mere fig leaf, covering over serious problems in the underlying conference report. For example, the bill pretends to protect libraries from receiving National Security Letters, but then revokes that protection if the library offers internet access. The bill does nothing to prevent the government from using security letters to obtain confidential information having nothing to do with terrorism; nothing to protect secret physical searches of homes and offices; and nothing to rein in abusive roving wiretap orders.

If we are serious about combating terror in the 21st century, we must move beyond symbolic gestures and color coded threat levels, and begin to make the hard choices needed to protect our Nation. If we really want to prevent terrorists from targeting our citizens and our cities, we need keep assault weapons out of the hands of suspected terrorists. And if we really want to protect our people and secure our ports and other transportation hubs, the administration needs to honor the letter and the spirit of our security laws and fully fund our homeland security needs.

The legislation before us today endangers our civil liberties, while doing nothing meaningful to protect our citizens. I urge a no vote.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina (Mr. COBLE), chair of the Subcommittee on Crime.

Mr. COBLE. Mr. Speaker, I thank the distinguished chairman from Wisconsin.

Mr. Speaker, pardon my immodesty. I believe that this bill has been thoroughly and consistently examined, but I don't think there has been a committee other than the House Judiciary Committee, I don't think there has been a subcommittee, other than the Subcommittee on Crime, Terrorism and Homeland Security, that has worked any more diligently than have we.

Now, the chairman used the words vulnerable and vulnerability in his opening statement. We are indeed, we were on 9/11, we are today. But as the chairman furthermore pointed out, much misleading and inaccurate information has been associated and directed to the PATRIOT Act. I used this example on the floor earlier, Mr. Speaker. A constituent of mine came to me all upset, concerned about the PATRIOT Act.

We must get rid of the PATRIOT Act, he said to me. I said to him, give me an example how it has adversely affected you. He said, I can't do it. I said, give me an example of how it has adversely affected anyone you know. I can't do it, he replied. I further said, give me an example where any third party has been adversely affected. Again he came up short.

This is the misleading information that has convinced many people across our land that it is no good. In this era of instant and universal communications, if a piece of legislation is as bad as my constituents thought it was, surely he would have some evidence as to some information to indicate to me why the bill is so onerous.

□ 1500

Granted, the bill expanded the parameters of law enforcement, but not to the detriment of law-abiding citizens.

After 9/11, I made the statement that my most pressing fear is that the next attack will come by water at ports and/or harbors, the very issue that plagues us today with the ports issue. We are indeed still vulnerable, but we are not as vulnerable as we were on 9/11, and part of that security must be directly related to the PATRIOT Act. We are not invincible, by any means; but we are more secure, we are more protected than we were then, because I think we now fully appreciate the enemy, the terrorism that hangs heavy over our heads; and I think the PATRIOT Act, Madam Speaker, will serve a good purpose to that end.

I again thank the chairman for having yielded time to me, and I thank him for his leadership as we have pursued this effort in the past several months.

Mr. CONYERS. Madam Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Madam Speaker, I want to say to my good friend and my respected chair and the Member who just spoke that one of the things you have to keep in mind is the information that they are saying hasn't been brought forward to the public wouldn't be brought forward to the public under what has been essentially a secret manner of investigation.

I rise in strong opposition to this legislation because it offers only superficial reform that would have little, if any, impact on safeguarding our civil liberties. Furthermore, it has become crystal clear that this administration is currently and will continue to abuse, attack, and outright deny the civil liberties of the people of this country in defiance of our Constitution. This administration is illegally wiretapping American citizens, illegally collecting information on peace groups, and illegally signing statements to ignore the torture ban recently enacted by this Congress.

Some of my colleagues will stand up here today and argue the PATRIOT Act had nothing to do with these nefarious activities, but my colleagues are not looking at the big picture. The administration is violating the laws Congress has passed and trampling on the Constitution of the United States.

I will not give this administration any additional police powers. Congress has failed to do its job as a coequal branch of government. The administration's attack on our democracy has to

be reined in. This Congress must not walk away from its role in providing a check and balance to the administration's exercise of executive power.

This Congress was not zealous in oversight prior to 2001; but since that time, this Congress has ignored its constitutional duty, and 200 years of American democracy have suffered. The complacency of this Congress is clearly viewed by the administration as a license to ignore the laws it disagrees with, and then it demands Congress pass expanded police powers.

In the name of the Constitution of the United States of America, I reject this complacency. I will not vote to give a single new police power to this administration. I voted against the PATRIOT Act when it first passed, and I remain even more opposed to this legislation today.

The bill before us today enables the FBI to investigate any American for any reason without the checks and balances of the judicial system. History tells us that unchecked police powers with little or no oversight will be abused and the citizens will be harmed. The administration's record in this area is concrete proof that history repeats itself.

I am for police function that protects citizens of this great Nation, not a police function that is used to terrorize them. I urge my colleagues to vote against the PATRIOT Act reauthorization, to stand up for our Constitution, to stand up for our Bill of Rights, to remember the long struggle that was instrumental in establishing those liberties.

Mr. SENSENBRENNER. Madam Speaker, I yield myself 1 minute.

Madam Speaker, the statement we just heard is at variance with what has happened since the PATRIOT Act was enacted.

First, none of the 16 provisions that expanded law enforcement powers has been held unconstitutional by any Federal Court in the country in over 4 years of being tested. Second, the PATRIOT Act requires the Justice Department Inspector General to report to Congress twice a year on civil liberties violations that have been investigated. We have gotten those reports. There haven't been any. Third, there is a provision in the PATRIOT Act that said anybody who thinks their civil liberties are violated can sue the Justice Department and get \$10,000 of statutory damages in addition to proven economic damages and attorneys fees. So far, not a dime has been paid out in judgments or settlements under this section.

This is an example of how the PATRIOT Act has been distorted by those who are opposed to it. Let us talk about the PATRIOT Act, because the PATRIOT Act has passed muster, and the facts and the court decisions show it.

Madam Speaker, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Madam Speaker, I thank the chairman for yielding me time.

Madam Speaker, after 9/11, one of the most responsible things that this Congress did was to pass the PATRIOT Act. It tore down that wall that existed between the intelligence community and the law enforcement community, a wall that was specifically talked about in the 9/11 Commission report as one of the failures of our government to prepare for the threats that we had prior to 9/11. What we are doing now is reaffirming that responsible act by this Congress. This today is the final critical piece of the USA PATRIOT Act, reflecting the careful balancing of national security and the civil liberties of our citizens.

In total, over 30 changes, additional civil liberty protections, have been made to the base legislation. It reflects the reality that security must not be juxtaposed against the notion of rights. It is absolutely true that the first civil right of all Americans is the right not to be murdered, not to be murdered by terrorists.

The three additional changes contained in the bill before us, S. 2271, go beyond the 30 additions that we had in the conference report itself. There are civil liberties protections concerning, first, the ability to challenge the legality of a section 215 order. Section 215 deals with business records, including library records. Secondly, it adds civil liberties protections concerning the protection of the confidentiality of a name of an attorney to whom information has been disclosed. Third, it places limitations concerning the use of national security letters with respect to libraries.

These 30-plus changes to the underlying legislation were made despite the fact that in this last year we had 13 separate hearings on the PATRIOT Act; and in those 13 hearings we found not a single, single, incidence of abuse of the law. We placed the Attorney General of the United States under oath. We placed the number two person at the Justice Department under oath. We heard from supporters of this act; we heard from the detractors of this act. We examined the Inspector General's reports. We had the opportunity to look at classified data that backed up the request for the use of this act.

I personally did that, as well as other members of the subcommittee and the full committee; and we could not find a single example of an established abuse of the statute as written or as applied.

On the basis of the Bali terrorist attacks, the bombing in Spain, the terrible 7/7 incident in London, the threat to the safety and security of our citizens continues. It didn't end with the passage of the PATRIOT Act. The PATRIOT Act, as it has been implemented, has allowed us to protect ourselves from future such attacks.

We must not now lapse into a pre-9/11 lethargy. Unlike normal criminal investigations, terrorism presents law

enforcement with the task of preventing a cataclysmic attack. That is why I rise in support of this bill before us.

Mr. CONYERS. Madam Speaker, before yielding to the gentleman from Virginia, I yield myself 45 seconds, because this is getting a little bit out of hand.

The assertion has been made that none of the 16 provisions have violated the law, but two Federal District Courts in New York and Connecticut have found that the national security letters themselves are illegal. Two courts, that the national security letters were held to be illegal. And to say that there have been no abuses, read pages 2 and 3 of the dissent of the Democrats on the Judiciary Committee about all of the violations that have gone on.

Mr. SENSENBRENNER. Madam Speaker, I yield myself 30 seconds.

Madam Speaker, the national security letters were not one of the additional law enforcement powers that were passed as a part of the PATRIOT Act. They were passed in 1986, 15 years before 9/11 and the PATRIOT Act was passed.

The gentleman is correct in saying that national security letters were held unconstitutional, and what we did in this reauthorization bill is to provide a procedure to challenge them and make them constitutional, even though they weren't in the original PATRIOT Act.

Mr. CONYERS. Madam Speaker, I yield 3 minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Madam Speaker, I thank the gentleman for yielding me time.

Madam Speaker, let me just first say I believe it is inappropriate to even discuss the PATRIOT Act until we have had hearings to find out what is going on with the NSA wiretaps. The PATRIOT Act could be, in fact, irrelevant if you are wiretapping at will, as the President has suggested; and we want to know exactly what is going on with those wiretaps before we do anything else. But this bill is on the floor, so we have to discuss that.

Unfortunately, I have to oppose this bill because it still continues to require no finding of individualized suspicion as a trigger to the secret record search powers in sections 215 and 505. That means that innocent Americans can have their sensitive records searched without any showing that they are an agent of a terrorist organization or scheming with terrorist organizations or doing anything illegal. Instead, this continues the problems in the original PATRIOT Act. This bill addresses several of the problems, but doesn't actually solve them.

One thing it helps is the fact that the recipient of a national security letter will be able to consult a lawyer without having to notify the government of the attorney's name. This is merely cosmetic, because that has actually been the recent practice.

In terms of these interstate letters, the bill addresses the right to challenge the gag order which applies to the secret orders under 215, as well as the national security letters; but it says that you can't make the challenge for 1 year. It codifies a 1-year period during which you can't do anything. That makes the present law worse. Presumably, you could go in right away to challenge the NSA and see the secret orders; but now you have to wait a year, and at the end of the year, you can't do anything, because all the government has to do is certify that the gag order needs to stay in effect. The judge has no discretion as to overturning that certification. So although this issue is addressed, it is actually made worse.

Finally, Madam Speaker, there is a question on the protection of privacy of library patrons in terms of the Internet service providers as to whether or not the library is an Internet service provider. The language is a little bit confusing.

Madam Speaker, I would enter into the RECORD a colloquy between the Senator from Illinois, Mr. DURBIN, and the Senator from New Hampshire, Mr. SUNUNU, the chief patron of the bill. Assuming that he means what he said he meant on the floor of the Senate, we don't have a problem with it. So I would like to ask unanimous consent to introduce into the RECORD the colloquy between the two Senators as to what section 5 actually means.

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Madam Speaker, reserving the right to object, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mrs. BIGGERT). The gentleman will state it. Mr. SENSENBRENNER. Madam Speaker, is it in order to introduce into the RECORD in this body debate that has been taken in the other body?

The SPEAKER pro tempore. By unanimous consent, it may be done.

Mr. SENSENBRENNER. Further reserving the right to object, let the record be clear that as manager of the bill, I do not necessarily agree with the debate that was taken between the two Senators in the other body.

□ 1515

But if the gentleman from Virginia wishes to insert that in the RECORD for its hortatory nature, I will not object. Madam Speaker, I withdraw my reservation.

The SPEAKER pro tempore (Mrs. BIGGERT). Without objection, it will be entered.

There was no objection.

Mr. SCOTT of Virginia. Madam Speaker, I would like to introduce this. It represents the intent of the chief sponsor of the bill, which we agree with, although I understand the manager of the bill in the House may not.

COLLOQUY BETWEEN SENATORS JOHN SUNUNU AND DICK DURBIN ON SECTION 5 OF S. 2271, FEBRUARY 16, 2006

Mr. DURBIN. Mr. President, at this moment, I wish to address the bill pending before the Senate, and that is S. 2271.

I commend Senator John Sununu of New Hampshire, who is here in the Chamber. Were it not for his hard work, we would not be here today. For weeks, while many of us were doing other things back home, Senator Sununu was working assiduously with the White House to find a way to address some very vexing and challenging issues when it came to modifying the PATRIOT Act. He has done an excellent job. I commend him and tell him that I have enjoyed working with him over the last 2 years, where we have crossed party lines and tried to find ways to keep the PATRIOT Act as a tool to make America safe but also at the same time to protect our basic liberties.

Every step of the way, as we considered changes to the PATRIOT Act, we have been supported by our Nation's librarians. These are wonderful men and women—professionals—who are dedicated to the libraries across America, which are such rich resources. I thank the librarians of America, especially for their heroic efforts to amend the PATRIOT Act in a responsible way and, equally as important, to defend our Constitution.

I understand that section 5 of Senator Sununu's bill, S. 2271, will help protect the privacy of Americans' library records. I ask the indulgence of the Chair that I might enter into a colloquy with Senator Sununu relative to section 5.

I would like to ask Senator Sununu, through the Chair, if he could explain to me what section 5 will accomplish.

Mr. SUNUNU. Mr. President, I am pleased to be on the floor today and pleased to be able to see the light at the end of the tunnel on PATRIOT reauthorization, thanks to the work of Senator Durbin and others. We have legislation before us that will make the adjustments to the PATRIOT Act reauthorization conference report mentioned by the Senator from Illinois. He specifically mentioned section 5 of our legislation. As he began to describe, section 5 is intended to clarify current law regarding the applicability of National Security Letters to libraries.

A National Security Letter is a type of administrative subpoena, a powerful tool available to law enforcement officials, to get access to documents. It is a document signed by an FBI agent that requires a business to provide certain kinds of personal records on their customers to the Government. These subpoenas are not approved by a judge before being issued.

What we did in this legislation is add clarifying language that states that libraries operating in their traditional functions: lending books, providing access to digital books or periodicals in digital format, and providing basic access to the Internet would not be subject to a national security letter. There is no National Security Letter statute existing in current law that permits the FBI explicitly to obtain library records. But, as was indicated by the Senator from Illinois, librarians have been concerned that existing National Security Letter authority is vague enough so that it could be used to allow the Government to treat libraries as they do communication service providers such as a telephone company or a traditional Internet service provider from whom consumers would go out and get their access to the Internet and send and receive e-mail.

Section 5 clarifies, as I indicated, that a library providing basic Internet access would not be subject to a national security letter, simply by virtue of making that access available to the public.

Mr. DURBIN. I thank the Senator from New Hampshire. It is my understanding that most public libraries, as he explained, offer Internet access to the public. Because of

this, they are concerned that the Government might consider them to be communications service providers similar to the traditional providers, such as AT&T, Verizon, and AOL.

So if I understand it correctly, your bill clarifies that libraries, simply because they provide basic Internet access, are not communications service providers under the law and are not subject to national security letters as a result. I ask the Senator from New Hampshire, through the Chair, is that a correct conclusion?

Mr. SUNUNU. Mr. President, I absolutely believe that the conclusion of the Senator from Illinois is correct. A library providing basic Internet access would not be subject to a National Security Letter as a result of that particular service and other services that are very much in keeping with the traditional role of libraries.

Some have noted or may note that basic Internet access gives library patrons the ability to send and receive e-mail by, for example, accessing an Internet-based e-mail service. But in that case, it is the Web site operator who is providing the communication service—the Internet communication service provider itself—and not the library, which is simply making available a computer with access to the Internet.

So I certainly share the concerns of the Senator from Illinois and others who have worked very long and hard on this and other provisions. I think it does add clarity to the law as he described, in addition to providing other improvements to the PATRIOT Act as they relate to civil liberty protections. All along, this has been about providing law enforcement with the tools that they need in their terrorism investigations while, at the same time, balancing those powers with the need to protect civil liberties. I think, in the legislation before us, we have added clarity to the law in giving access to the courts to object to section 215 gag orders and, of course, striking a very punitive provision dealing with counsel and not forcing the recipient of a National Security Letter to disclose the name of their attorney to the FBI.

All of these are improvements to the underlying legislation, and I recognize that we had a overwhelming, bipartisan vote today to move forward on this package. I anticipate that we will have similar bipartisan votes in the days ahead to conclude work on this legislation and get a much improved PATRIOT Act signed into law.

Mr. DURBIN. I thank the Senator from New Hampshire, as well, because that clarification is important. So if a library offers basic Internet access, and within that access a patron can, for example, send and receive e-mail by accessing an Internet-based e-mail service such as Hotmail, for example, that does not mean the library is a communications service provider and, therefore, it does not mean that a library could be subject to these national security letters of investigation.

By way of comparison, a gas station that has a pay phone isn't a telephone company. So a library that has Internet access, where a person can find an Internet e-mail service, is not a communications service provider; therefore, it would not fall under the purview of the NSL provision in 18 U.S.C. 2709. It is a critically important distinction. I thank the Senator from New Hampshire for making that clear and for all of his good work on this bill.

Libraries are fundamental to America. They symbolize our access to education. They are available to everyone, regardless of social or economic status.

When we first introduced the SAFE Act, I went to the Chicago Public Library to make the announcement. The library was established in 1873, and for over 130 years it has

given the people of the City of Chicago the ability to read and learn and communicate. Here is what the mission statement says at that public library:

We welcome and support all people and their enjoyment of reading and pursuit of lifelong learning. We believe in the freedom to read, to learn, and to discover.

We have to ensure, in the Senate and in Congress, in the bills that we pass, including the PATRIOT Act, that this freedom to read, learn, and discover is preserved for our children and our grandchildren.

Mr. President, I yield the floor and I suggest the absence of a quorum.

Mr. SENSENBRENNER. Madam Speaker, I yield 1½ minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Madam Speaker, I rise today to support the continued effort to reauthorize the United States PATRIOT Act. It is well overdue for this Congress to ensure those trying to protect the American people have all the tools necessary to combat terrorism.

With the passage of this bill, Congress will have demonstrated its overwhelming desire to protect our civil liberties while protecting our homeland. We have taken every precaution to ensure an overzealous government cannot overstep its constitutional responsibility.

Among other provisions, this legislation allows a person receiving a FISA production order to produce any tangible item that they deem necessary to challenge that order before a district court.

This bill also removes libraries from the definition of a wire or electronic service communication provider for purposes of granting the national security letters, unless, unless the library actually provides electronic communication service.

These are commonsense amendments that will continue to fine-tune the balance between our homeland security and our constitutional rights as American citizens. I thank Chairman SENSENBRENNER for yielding me the time and for his outstanding work on this vital issue.

Mr. CONYERS. Madam Speaker, I yield myself 15 seconds.

Madam Speaker, just to keep the record straight, in 1986, national security letters were limited to terrorists. The PATRIOT Act lowered the standard to anything relevant to an investigation, and now over 30,000 are issued every year. The sham fix does not help us at all.

Madam Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Madam Speaker, we are engaged in a serious war with terrorism. But we are going after the wrong targets. We are not protecting ourselves, but we are attacking our liberties. We are not doing anything adequate to secure the loose nuclear materials all over the former Soviet Union before they are smuggled to al Qaeda to make atomic bombs.

We search only 5 percent of the 9 million shipping containers that come into

our country every year, any one of which could contain a weapon of mass destruction.

But what are we doing? Well, the President has orchestrated a secret conspiracy to violate the criminal law by ordering clearly illegal domestic surveillance.

And now we renew the PATRIOT Act with some of the worst provisions only cosmetically changed and continuing to threaten civil liberties. Section 215 allows the government to obtain business reports about people, including library, medical and various other types of business records, as long as they are "sought for a terrorism investigation."

The government simply has to come up with a statement of facts showing there are reasonable grounds to believe that tangible things sought are relevant to an authorized investigation. Relevant? Almost anything can be relevant.

To make matters worse, the recipients of a section 215 order are subject to an almost unreviewable automatic gag order. Now we are told, under this bill, that judicial review can take place after a year. At best. A year? And in order to prevail in challenging a gag order, a certification by the government that disclosure would harm national security or impair diplomatic relations would be conclusive, unless shown it would be in bad faith.

Conclusive? No evidentiary showing, no evidentiary test. That is absurd. That means there is no test at all. Section 505 authorizes FBI field office directors to collect in secret almost limitless sensitive personal information from entities simply by issuing national security letters.

The FBI can simply say they want your private and sensitive information and they can get it. This is very much like the writ of assistance the British used to grant in 1761 that helped start the American Revolution. Under the conference report, recipients would theoretically have the ability to challenge these gag orders, but again that will be virtually impossible.

As with section 215, the government's assertion that the gag order is necessary to protect the national security would be a conclusive presumption that the government is telling the truth that the gag order could stand.

You can only challenge the government's bad faith. This automatic permanent gag rule very likely violates the first amendment, as two courts have already found. We ought to have real protections. We ought to have some procedural safeguards in the PATRIOT Act such as our entire American tradition demands.

The conference report does not replace the section 215 showing of relevance standard with the three-part test that was the basis of the Senate compromise which provided some meaningful due process protections. It should.

The conference report does not restore the section 505 previous standard

of specific and articulable facts connecting the records sought to a suspected terrorist. It should.

The conference report does not allow recipients of section 215 orders and national security letters a meaningful court challenge to the gag order. It should.

And, finally, the conference report does not sunset section 505, national security letters, in 4 years. It should.

I very much urge defeat of this PATRIOT Act reauthorization so that we can mend the bill so it doesn't destroy our constitutional liberties. Mend it, not end it. But this doesn't help.

Mr. SENSENBRENNER. Madam Speaker, I yield 2½ minutes to the gentleman from Florida (Mr. STEARNS).

Mr. STEARNS. Madam Speaker, I would just say to this side, this bill has gone through so many iterations, and so many times we have looked at this. It includes 30 additional civil liberties safeguards. And, you know, I admit that your fighting against this bill has probably improved it a little bit.

But at this point, we have done so much to help it. I think it is a very good bill. I commend the author, Mr. SENSENBRENNER, for his patience all during this process.

These new civil liberty safeguards include allowing recipients of search requests or national security letters to seek legal counsel for appealing the decision to the FISA court and mandated reporting to the public and Congress on the use of national security letters, data-mining and delayed-notice search warrants.

This is a vigilant protector of civil rights and national security, and it is the right balance. It is critical that we pass this bill today. I would say in passing that part of the PATRIOT Act was a cargo amendment that I included. I thank the chairman for allowing me to do that.

In Florida alone, local and State agencies joined together and developed a unified strategy for prevention and enforcement against cargo theft, resulting in about a 25 percent decrease in cargo thefts. Unfortunately, my colleagues, the FBI estimates, and these are only estimates because we do not have any way to track this information, overall national loss from cargo theft remains at almost \$6 billion annually.

The interagency cooperation must be expanded from the State level to include nation-wide enforcement. Cargo theft imperils our Nation's security, and data indicates profits from cargo theft often go to organized crime or to terrorist activities.

So for that reason, for 2 years I have been working on this amendment, which is included as part of the PATRIOT Act, to, first of all, combat this crime by increasing mandatory minimum sentencing and directing consolidation of cargo theft trend data—simple collection of this cargo theft trend data into the federal Uniform Crime Reporting system, so in fact that system we have a better understanding of

it, and we can coordinate between different law enforcement agencies.

These are vital steps to fight this growing nation-wide threat, and I am pleased to have it included in the PATRIOT Act.

I ask my colleagues to realize the amount of work that has gone into this bill. It is absolutely necessary we pass it. I urge my colleagues to vote for it.

Thank you, Mr. Speaker and Mr. Chairman for your efforts to pass this critical legislation.

Our founding fathers knew our young Nation faced dangerous security challenges from its amorphous and expansive border and aggressive European powers. With that in mind, Thomas Jefferson wrote, "The price of freedom is eternal vigilance."

The situation confronting us today mirrors that of our founders. Our border is even larger and more difficult to control. With additional points of entry at every airport, prohibiting entry of those intent on doing harm is even more complex. Advanced technologies allow individuals across the oceans to coordinate attacks within our cities. This is an eventuality impossible for our founding fathers to foresee, and yet necessary for us to combat. We must keep pace with the changing environment. The PATRIOT Act equips us to do that by breaking down communication barriers between law enforcement and intelligence agencies, a weakness identified by the 9/11 Commission.

In Florida, law enforcement increased inter-agency cooperation with impressive results. In 2001, local and state agencies joined together and developed a unified strategy for prevention and enforcement against cargo theft, resulting in a 25% decrease in cargo thefts. Unfortunately, the FBI estimates overall national loss from cargo theft remains more than \$6 billion annually. Interagency cooperation must be expanded from the state level to include nationwide enforcement. Cargo theft imperils our national security, and data indicates profits from cargo theft often funds organized crime or terrorist activities. For two years, I have worked to pass legislation combating this crime by increasing mandatory minimum sentences and directing consolidation of cargo theft trend data into the federal Uniform Crime Reporting system to better coordinate enforcement activities. These are vital steps to fight this growing nationwide threat, and I am pleased they were included in this PATRIOT Act reauthorization.

As we debate these amendments to the PATRIOT Act, I hear echoes of another founding father's words. Benjamin Franklin's assertion that, "They who give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety," resounds as an admonition to those of us standing in this chamber to ensure proper oversight and protect civil liberties.

This legislation includes 30 additional civil liberties safeguards. These include: allowing recipients of search requests or National Security Letters to seek legal counsel for appealing the decision to the FISA Court, and mandated reporting to the public and Congress on the use of National Security Letters, data mining, and delayed notice search warrants.

As vigilant protectors of national security, and critical guardians of civil liberties, with full

realization of the immediate threat we face, I call upon my colleagues to vote in favor of this bill. Due diligence has been observed . . . investigated . . . executed . . . and critiqued. Now it is time to pass this Act.

Mr. CONYERS. Madam Speaker, I yield 3 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Madam Speaker, this is an extremely important debate. I want to begin by expressing my disappointment that this bill is being considered as a suspension along with the naming of post offices. Well, you know what, this is not a post-office-naming bill. This is a bill that deals with constitutional rights. It is an issue about which seven States in this country have raised concerns, as have hundreds of municipalities from one end of America to the other.

This is a bill that should allow for amendments and serious debate and not be considered simply as a suspension.

Madam Speaker, many Americans are wondering how it could be that in terms of national security, our President believes that it is okay for a foreign government with terrorist ties to run major ports in America; that that is okay. But when some of us say that maybe kids or just ordinary American citizens should be allowed to read the books that they want in libraries without being investigated by government agents, without any evidence that they are engaged in terrorist activities or have any ties to terrorism, that we cannot protect.

Madam Speaker, there is growing concern in this country with regard to the state of our civil liberties and our constitutional rights. Whether it is the President of the United States engaging, through the NSA, in illegal wiretaps without court orders, or the widespread use of national security letters, millions of Americans, whether they are progressives, whether they are conservatives or in between, are very concerned about Big Brother investigating the private lives, the private reading habits of ordinary Americans.

Madam Speaker, in June of 2005, I offered an amendment that passed with a very strong bipartisan vote, which said that libraries and book stores should be exempt from section 215, that it is wrong for the government to be able to access the reading records or the book purchases of innocent Americans unless they can establish that those individuals have ties with terrorism.

All of us want our government to be vigorous in protecting the American people against terrorism. But we want to do that in a way that does not undermine the constitutional rights of the American people. Unfortunately, the Republican leadership took that amendment, which passed with strong bipartisan support, and they tossed it out. They rejected the will of a vast

majority of the Members of the House of Representatives and did not incorporate that language into the final bill.

Madam Speaker, this is an issue of huge consequence. Fighting terrorism is an enormously important issue, but we can and must do it without undermining the constitutional rights of the American people.

Mr. CONYERS. Madam Speaker, I yield 45 seconds to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Madam Speaker, as I indicated before, we need to have hearings on the NSA wiretaps. The question there is not whether or not the wiretaps can take place, but whether or not they take place in the concept of checks and balances.

Also, we need to know what kinds of wiretaps are going on, and it would be nice to have hearings on that before we consider the PATRIOT Act. But when one of the previous speakers talked about the due process involved, we have to remind people that the due process is not for the person whose records are being gathered, but due process on the library that does not have enough money to operate the library, whether or not they have a right to go out and hire a lawyer to protect somebody else's rights.

The person affected does not have any rights in this situation. It is just the library and their own good will. If they want to go out and protect somebody's rights, they have that opportunity. These are extraordinary rights, police rights and police powers; and we need to make sure that people actually understand what is going on here.

Mr. CONYERS. Madam Speaker, I yield myself the remainder of the time.

Madam Speaker, it has been said that there have been no abuses of the PATRIOT Act. Let me just run down what has already been reported, and probably there have been more, since we filed our report.

It was used against Brandon Mayfield, a Muslim American, to tap his phone, seize his property, copy his computer files, spy on his children, take his DNA, all without his knowledge.

It has been used to deny, on account of his political beliefs, the admission to the United States of a Swiss citizen and prominent Muslim scholar to teach at Notre Dame University. It has been used to unconstitutionally coerce an Internet service provider to divulge information about e-mail activity and Web surfing on its system, and then gag that provider from even disclosing the abuse to the public.

□ 1530

Because of gag restrictions, we will never know how many times it has

been used to obtain reading records from libraries and book stores, but we do know that libraries have been solicited by the Department of Justice, voluntarily or under threat of the PATRIOT Act, for reading information on more than 200 occasions since September 11.

Finally, it has been used to charge and detain and prosecute Muslim students in Idaho for posting Internet Web site links to objectionable material.

Let us not support this PATRIOT Act today.

Mr. SENSENBRENNER. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I can't believe what I have heard from my friends on the other side of the aisle. If they succeed in defeating this bill, it is a case of being sorry for getting what you ask for. This bill actually puts more civil liberties protections into the PATRIOT Act than the conference report which has already been passed by both Houses and is ready to be enrolled and sent to the President for his signature.

So if you have your way and you vote down the bill that was authored by the gentleman from New Hampshire, Senator SUNUNU, you are not going to have the additional civil liberties protections that are contained in Senate 2271. That is not going to stop the conference report which you opposed in December, as is your right, from going to the President and being signed without these additional civil liberties protections.

If you are for more civil liberties protections in the PATRIOT Act, vote for this bill. If you are against them, vote against this bill. But the fate of this bill has no bearing on the fact that the conference report on the PATRIOT Act reauthorization has been cleared by both Houses and is ready to go to the White House. So think before you vote "no." I am voting "aye" because this is a good bill, and we ought to vote on this bill based upon what is in it rather than what is in other legislation.

Mr. LARSON of Connecticut. Madam Speaker, I rise today in opposition to S. 2271, a bill that circumvents the regular legislative process and fails to truly improve the PATRIOT Act.

Last year, I rejected the PATRIOT Act reauthorization and the conference report because I thought Congress could strike a more reasonable balance in empowering law enforcement and protecting civil liberties. I was concerned then, as I am now, that the reauthorization language would remove the protection of sunsets to most of the PATRIOT Act, which was critical to earn support for such sweeping legislation in 2001. These sunset provisions ensure that Congress will continuously be able to take a closer look at how law enforcement powers are implemented and the effectiveness of balancing security and freedom. I continue to believe that Congressional oversight over one of the most fundamental challenges of our time would not hinder our society but enhance it.

First, let us be clear about what we are voting on today—an amendment to a conference

report. Conference reports are not amendable. Conference reports are the product of conference committees that have hammered out the differences between House and Senate versions of legislation. A conference report is one of the last stages of the legislative process and it must be wholly rejected or accepted by the two chambers.

Since the Majority and the Administration cannot pass the PATRIOT Act reauthorization conference report on its merits through the regular legislative process, the House must now consider a bill that amends the report. Instead of being honest with the American people that the conference report is flawed, the Majority is attempting to maneuver legislation through the House that they purport will "fix" the underlying problems of the PATRIOT Act reauthorization and fast-track the bill to President Bush's desk.

Even if this "fix" was added to the conference report, many discrepancies in the protection of privacy, civil liberties and Congressional oversight still remain. For example, with no meaningful changes to the conference report, access is still allowed to sensitive personal records, including medical, business and library records (Section 215) and national security letters that request personal information are still issued with no judicial review (Section 505).

Today, I reject the idea that the Majority and the Administration can use this bill as political cover to gain enough support for passage of the PATRIOT Act reauthorization. The fact remains that the PATRIOT Act reauthorization still needs more work, more safeguards, and more oversight. As the 109th Congress continues to discuss protecting the homeland and civil liberties, I challenge my colleagues to have an open review and debate on improving the PATRIOT Act, and to work together—in a bipartisan manner—to strengthen national security in a way that is consistent with the fundamental rights and freedoms this country was founded on.

Mr. SHAYS. Madam Speaker, I strongly support the PATRIOT Act, which plays an instrumental role in the detection and prevention of terrorist attacks.

Terrorists will strike again. It is not a question of if, but of when, where and of what magnitude. We are in a race to stop the terrorists before they use weapons of mass destruction against us.

The PATRIOT Act empowers our intelligence and law enforcement communities to play vital roles in helping the United States win this race.

To fight the war on terrorism, our intelligence agencies must have the right tools. However, with these added tools, there must be added oversight. The protection of our civil liberties is of utmost concern to me.

For this reason, Congresswoman MALONEY and I have offered H.R. 1310, the Protection of Civil Liberties Act, which would reconstitute the Privacy and Civil Liberties Oversight Board as an independent agency within the Executive Branch.

The establishment and adequate funding of the Privacy and Civil Liberties Board was a crucial recommendation by the 9/11 Commission. In its Final Report on 9/11 Commission recommendations, the commission notes "very little urgency" and "insufficient" funding as it relates to the establishment of the Board.

The bottom line is, we can no longer think in terms of the Cold War paradigm of contain-

ment, reaction and mutually-assured destruction. The modern threat requires us to detect and prevent attacks.

The PATRIOT Act improves our anti-terrorism capabilities by focusing on intelligence gathering, immigration, criminal justice and the financial infrastructure.

Ms. DEGETTE. Madam Speaker, I rise today in opposition to S. 2271, the "USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006."

I am strongly committed to fighting and winning the war on terror. The most solemn obligation of government is to protect the citizenry, and we need to make sure that law enforcement has the powers it needs to do so.

At the same time, governments throughout history, including our own, have abused their authority in the name of promoting such security. Americans should feel comfortable that while government is protecting them from others, their private lives are protected from unwarranted government intrusion. The right to privacy is one of our most precious rights, a hallmark of the American experiment.

I opposed the initial USA PATRIOT Act in 2001 because it threatened our civil liberties. As I have said before, while the compromise makes some improvements to the original USA PATRIOT Act, it does not go far enough to preserve civil liberties.

It will remain too easy for the government to fish through the private information of innocent Americans. This includes medical, gun, library, and financial records. Institutions that receive requests for information are still prevented from talking about them, and their ability to successfully challenge these "gag orders" is limited or nonexistent. Government's power to conduct secret searches of one's personal effects without prior notice, so called "sneak and peak" authority, remains too expansive.

S. 2271 only makes three changes to the prior act. First, it allows recipients of Section 215 orders to challenge accompanying "gag orders." However, it delays any action for at least one year and makes a successful challenge virtually impossible. Second, it clarifies that recipients of Section 215 orders and National Security Letters (NSLs) do not have to disclose to the government the identities of attorneys consulted to assist in responding to these requests. Finally, it seeks to exclude libraries from the reach of NSLs. Unfortunately, there is considerable disagreement about whether the language in S. 2271 actually will accomplish its goal of clarifying that libraries are not subject to NSLs.

These changes, taken as a whole, are at best small improvements which, most significantly, do not address the larger concerns I discussed earlier. As such, I cannot endorse S. 2271 and this reauthorization of the USA PATRIOT Act.

I am pleased that Senator SPECTER and others have said they will revisit the USA PATRIOT Act to deal with the many problems that remain. I look forward to a new bill that more properly balances our need to protect civil liberties and provide tools necessary in fighting terrorism.

Ms. HARMAN. Madam Speaker, the Patriot Act Conference Report which Congress will amend today deals with the outcry leveled at provisions in the original Patriot Act that allow the government to have access to library records.

I strongly agree that the original PATRIOT Act was too broad: it permitted the FBI and

other agencies to issue National Security Letters (NSL)—secret administrative subpoenas—without court approval to obtain a wide range of data from libraries that had little or nothing to do with fighting terrorists.

But embedded in the law was something I felt and still feel was essential to prevent and disrupt terrorist plots: it covered Internet sites at libraries that also function as Internet Service Providers (ISPs), places terrorists use to communicate with each other—something they have done effectively in the effort to evade being monitored.

Though it was extremely unpopular, I voted against early efforts to repeal Section 215 of the PATRIOT Act—the so called Library Provision—because those efforts included ISPs. Last year, Congressman BERNIE SANDERS' amendment Section 215 expressly did not include ISPs, and I spoke for it on the floor.

Today's bill modifies the PATRIOT Act by barring the government from using NSLs to obtain records from libraries functioning in their traditional roles. Only libraries that also function as ISPs are now covered. This compromise is right and the law ensures that we can continue to monitor terrorist activity on the Internet.

In my view, however, we need to do more. Congress should fold additional checks and balances into the NSL process to protect business and other records in the same way this bill protects libraries. Checks and balances—such as those contained in legislation sponsored by the Intelligence Committee Democrats and senior Judiciary Committee Democrats—would subject NSLs to judicial oversight and enhanced congressional scrutiny.

The specter of a terrorist attack on U.S. soil is very real. It is a prospect that keeps me up at night. Clearly, we need modern tools to track 21st century threats, but not at the expense of our precious liberties, which are the essential foundation of American democracy. Today's bill to amend the PATRIOT Act is a step in the right direction.

Mr. BROWN of Ohio. Madam Speaker, today, the House considers S. 2271, The USA PATRIOT Act Additional Reauthorizing Amendments Act.

I opposed the original 2001 PATRIOT Act because it failed to strike an appropriate balance between giving law enforcement agencies the tools necessary to protect Americans from terrorism and maintaining the freedoms that protect America from tyranny. Like the 2001 bill, the PATRIOT Act reauthorization conference report is unacceptable, and the amendments proposed by S. 2271 again fall short of the mark.

Last year, the Senate unanimously agreed to legislation striking an appropriate balance between security and liberty. That bill offered an opportunity to fight terrorism effectively without giving up our rights and freedoms. By contrast, S. 2271 would make minor changes to the PATRIOT Act, and the final result falls well short of the standard set by the Senate legislation.

We should insist on real PATRIOT Act reform that protects both our safety and our freedom. Until then, I cannot support fig leaf legislation intended to cover up the basic problems of the PATRIOT Act.

You not only have to do the right thing, you have to do it in the right way. This act and these amendments do neither.

Mr. BLUMENAUER. Madam Speaker, I strongly oppose S. 2271, Additional Reauthor-

izing Amendments to the PATRIOT Act. This legislation fails to address any of the core fundamental flaws with the original PATRIOT Act and makes controversial provisions permanent which threaten American's civil liberties. By making the sunset provisions permanent, we are losing the opportunity for a meaningful review.

Time and time again, we have extended the reauthorization deadline in an effort to fix the flaws and yet once more we have brought forth legislation that compromises our civil rights in exchange for government control.

As we saw last year, the administration was cavalier with domestic spying through the National Security Administration. Their ability to undermine the American public should worry my colleagues and makes me question the reasoning behind giving additional authority with the USA Patriot Act.

In S. 2271, a recipient of national security letters (NSL) is able to challenge a nondisclosure (gag) order but they must wait a year until they can file a petition and that order can be renewed indefinitely at the government's discretion, making it harder to challenge.

In addition, S. 2271 fails to provide meaningful protection for the privacy of library patrons and library records. It exempts libraries that operate in their traditional role, but does not exempt those who use or offer electronic communication services such as Internet access.

This legislation gives the administration too much flexibility and does not force Congress to review the act as needed. In a country that prides itself on civil rights and freedom of speech we must have the ability to question and modify legislation. We must maintain a system with checks and balances to ensure that our government works for our citizens in a transparent way.

The lack of transparency is further demonstrated with the Combat Methamphetamine Epidemic Act. Methamphetamine has taken Oregon, as well as this country, by storm. I fully support efforts to combat this epidemic; however, I will not vote for the egregious PATRIOT Act just because it includes methamphetamine provisions. This is a cheap tactic and we should not be using victims of this epidemic as political chess pieces.

I have no doubt that we can keep America safe without compromising our civil liberties. Sadly, the bill does compromise our rights.

Mr. UDALL of Colorado. Madam Speaker, while I will vote for this bill, I cannot be enthusiastic about it because it does very little to improve the laws it amends. And I cannot help regretting that the House is not being allowed to even consider improving the bill itself.

By refusing to allow any amendments to be considered, the Republican leadership not only is missing an opportunity to refine and clarify the language of this Senate bill, it is insisting on preventing any attempt to broaden the bill so it will do more to strike the right balance between fighting terrorism and respecting civil liberties. This is not the right way for us to do our work.

The bill in effect amends the conference report on H.R. 3199, the bill to revise and renew various provisions of the "USA PATRIOT Act" (more commonly called simply the "PATRIOT Act") that was passed by the House last year.

I voted against that conference report.

I support renewing the new tools the PATRIOT Act provided to fight terrorists. But I

also thought then—and still think today—Congress should take care to protect Americans' civil liberties. And, after careful review, I concluded that the conference report did not do enough to reduce the potential that the authority it gives to the FBI and other agencies could be abused or misused in ways that intrude on Americans' privacy and civil liberties—a potential that has led more than 300 communities as well as Colorado and six other States—governments that in all represent over 62 million people—to pass resolutions opposing parts of the PATRIOT Act.

I had hoped I could vote for the conference report, because earlier the Senate, to its credit, did a better job than the House in responding to the concerns that prompted such resolutions, while still providing ample tools that the government can use to work against the threat of more terrorist attacks, at home and abroad.

I could have supported enactment of the bill as passed by the Senate, and I hoped that the conference report would closely resemble that Senate-passed bill. Unhappily, those hopes were not fulfilled—but I took new hope when the Senate refused to cut off debate on the conference report and it became clear that there would be an effort to revise it to address concerns about its effects on civil liberties.

Specifically, I hoped that the conference report would be revised to include provisions like those in H.R. 1526, the "Security and Freedom Ensured Act of 2005," or SAFE Act. I am a cosponsor of that bill, which would amend the PATRIOT Act in several important ways.

It would modify the provisions regarding "roving wiretaps" to require that: (1) an order approving an electronic surveillance specify either the identity of the target or the place to be wiretapped; and (2) surveillance is to be conducted only when the suspect is present.

It would revise provisions governing so-called "sneak and peek" search warrants to: (1) limit them to cases where immediate notice of issuance would endanger someone's life or physical safety, result in flight from prosecution or intimidation of a potential witness, or lead to destruction of or tampering with evidence sought; and (2) require notice of the warrant within 7 days (instead of just a "reasonable period") after execution, with extensions for additional periods of up to 21 days if the court finds reasonable cause.

It would require the FBI to have a more specific reason to seek to obtain that person's business records for foreign intelligence and international terrorism investigations.

It would provide that libraries shall not be treated as wire or electronic communication service providers under provisions granting counterintelligence access to provider subscriber information, toll billing records, or electronic communication transactional records.

It would redefine "domestic terrorism" to mean activities that involve acts dangerous to human life that constitute a Federal crime of terrorism. And it would add several provisions to the list subject to "sunset," so that Congress would have more incentive to review their implementation and to consider possible changes.

I think the SAFE Act sets an appropriate standard for legislation to revise and reauthorize the PATRIOT Act.

Unfortunately, the conference report did not meet that standard, and even more unfortunately the negotiations that followed the Senate's refusal to end debate on the conference

report did not result in legislation that would bring the conference report into line with the "SAFE" Act.

Instead, those negotiations resulted in the bill now before the House, on which the only choice allowed by the Republican leadership is "yes" or "no."

The bill would make some revisions in the conference report. Specifically, it would—(1) allow recipients of a production order under Section 215 of the PATRIOT Act to ask a judge of the special court established by the Foreign Intelligence Surveillance Act (FISA) to modify or quash the "gag rule" that bars disclosure of the order; (2) end the rule that recipients of a Section 215 order or national security letter (NSL) must name any attorney consulted about the order or NSL; and (3) clarify that libraries, the services of which include offering patrons access to the Internet, are not subject to NSLs, unless they are functioning as electronic communication service providers.

However, a challenge to the gag rule could not be brought until a year after an order or NSL is issued, and the bill would establish as conclusive a government certification that a waiver may endanger national security unless it was made in bad faith.

At best, these are very minor improvements in the conference report. And the language of the bill is not without ambiguity on several points—which is why the Republican leadership should have allowed consideration of clarifying amendments.

But, unfortunately, both the House and the Senate have approved the conference report and it is ready to go to the President to be signed into law. So, the choice now before the House is whether to pass this bill or whether we instead will allow the conference report to become law without even these minor improvements.

And on that question, I think our country is better served by enactment of this inadequate and incomplete bill than by its defeat—and so I will vote for it.

Mr. PAUL. Madam Speaker, contrary to its proponents' claims, S. 2271 fails to address the constitutional flaws in the PATRIOT Act or protect innocent Americans against future abuses of their civil liberties. Rather, passing this bill makes the permanent authorization of most of the act inevitable. Therefore, I urge my colleagues to vote against S. 2271 in order to force the House and Senate to craft a new legislation giving the government the tools necessary to fight terrorism without sacrificing constitutional liberties.

The Chairman of the Senate Judiciary Committee essentially admitted that S. 2271 does nothing to address the core concerns constitutionalists and civil libertarians have with the PATRIOT Act. In fact, he has announced his intention to introduce his own PATRIOT Act reform bill! However, if S. 2271 passes and PATRIOT Act extension becomes law, it is highly unlikely that this Congress will consider any other PATRIOT Act reform legislation.

USA Today's Editorial of March 1, "Patriot Act 'compromise' trades liberty for safety," accurately describes how people concerned about individual liberty should react to S. 2271's "reforms": "Big Deal. By any standard of respect for the Bill of Rights, those provisions never should have been in the law in the first place. What is it about the Fourth Amendment ('The right of the people to be secure

... against unreasonable searches and seizures shall not be violated') that Congress doesn't get?"

Among S. 2271's flaws are provisions restricting recipients of a "gag" order regarding government seizure of private records from seeking judicial review of such orders for a year and requiring that recipients prove government officials acted in "bad faith," a ridiculously high standard, simply to be able to communicate that the government has ordered them to turn over private records. The bill also requires that recipients of National Security Letters, which can be abused to sidestep the requirements of the Fourth Amendment, provide the FBI with the names of any attorneys from whom they have sought legal counsel from. S. 2271 would thus prohibit a National Security Letter recipient from even asking a lawyer for advice on complying with the letter without having to report it to the FBI. In fact, S. 2271 requires National Security Letter recipients to give the FBI the names of anyone they tell about the letter. This provision will likely have a chilling effect on a recipient of a National Security Letters ability to seek legal advice or other assistance in challenging or even complying with the National Security Letter.

Madam Speaker, S. 2271 does not address the fundamental constitutional problems with the PATRIOT Act. To the contrary, S. 2271 will make most of the PATRIOT Act's dramatic expansions of federal power a permanent feature of American life. Therefore, I urge my colleagues to reject this bill and work to ensure government can effectively fight terrorism without sacrificing the liberty of law-abiding Americans.

Mr. FARR. Madam Speaker, I rise in opposition to S. 2271, the PATRIOT Act Amendments.

James Madison, our 4th President, said, "I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."

The PATRIOT Act and its subsequent amendments are exactly what the "Father of the Constitution" was talking about.

Democracy means the "common people rule". And the "common people" of the 17th district have proclaimed that Americans should not have to compromise their civil liberties in order to combat extremism. The local governments of Pacific Grove, Salinas, Santa Cruz, and Watsonville, California have all passed resolutions expressing their concerns with the anti-privacy and anti-liberty nature of the PATRIOT Act.

As we promote democracy at other countries, should we not ourselves be practicing and preserving democracy within our own society?

Madam Speaker, I urge a no vote on the PATRIOT Act amendments.

Mr. STARK. Madam Speaker, I rise in opposition to S. 2271, the USA PATRIOT Act. Additional Reauthorizing Amendments Act of 2006. This bill is a great example of what happens when you put Republican Senators in a room with DICK CHENEY to negotiate over Constitutional rights. It's like two foxes negotiating over who can do more damage to the henhouse without upsetting the neighbors.

Examining this deal more closely, we see that giving the American people the right to

consult a lawyer or challenge a gag order in court is somehow considered a concession by the Bush Administration. Other than that, it's the same old PATRIOT Act that criminalizes speech, protest, and meetings of citizens while also eliminating the right to due process and a search warrant.

This bill permanently extends 14 of 16 expiring provisions of the PATRIOT Act. Government can still listen in on your phone conversations without any proof that a terrorist is using the phone and can conduct secret searches of your property. The law will still allow our Government to send a letter to your bank, Internet Service Provider, insurance company, or any other business demanding information about you. The only difference is that businesses no longer have to tell the FBI when they consult an attorney about the request.

A government official can still forbid a business from telling anyone that records have been obtained, although this gag would last for an initial one-year period rather than indefinitely. However, the gag can be renewed and doing so is actually made easier by this supposed grand compromise. Finally, the Bush Administration has magnanimously agreed not to look at your library borrowing records, although this agreement makes it easier for them to find out what websites you visit while at the library.

Madam Speaker, the PATRIOT Act can never be fixed because it starts with the fundamental presumption that the Constitution gets in the way of protecting Americans. In fact, we need the Constitution more than ever to protect us from politicians who think they're above the law.

Ms. ESHOO. Madam Speaker, I rise in opposition to S. 2271. This bill makes a few cosmetic changes, but the changes do little to address the serious civil liberties concerns that I and countless Americans have raised during the debate over the reauthorization of the PATRIOT Act.

For example, nothing has been done to integrate needed checks and balances into the National Security Letter (NSL) process. NSLs are requests for financial, telecommunications, credit, and other business records issued directly by government agencies in national security investigations without the approval of a judge. Before the PATRIOT Act, the FBI and other issuing agencies could issue an NSL only if there was some nexus to an agent of a foreign power or terrorist. Post-PATRIOT Act, the government only has to show the request is relevant to an investigation. The lowering of this standard has resulted in an all-time high number of NSLs issued. Passage of this legislation will do nothing to change this disturbing trend or enhance congressional or judicial oversight over NSLs.

This bill also fails to address issues related to the President's National Security Agency (NSA) domestic surveillance program. I strongly believe this program must be subject to statutory restrictions, including the Foreign Intelligence Surveillance Act (FISA). Congress should not stand by in silence and allow this controversial program to continue unchecked.

Unfortunately, in spite of having adequate time to engage in constructive discussions to fix the PATRIOT Act reauthorization Conference Report, the sponsors of S. 2271 chose again to exclude Democrats from negotiations. Instead, they've offered a bill that

makes only a few superficial changes to the Conference Report, and because this bill is being considered under suspension of the rules, we don't have an opportunity to offer meaningful amendments that could greatly improve the PATRIOT Act and ensure the protection of privacy and civil liberties as well as our national security.

I oppose this bill and find it regrettable that an important opportunity to initiate real reforms to this legislation has been squandered.

Mr. PENCE. Madam Speaker, later this afternoon we will consider additional reauthorizing amendments to the PATRIOT Act. The PATRIOT Act Conference Report is a balance between liberty and security. Chairman SENSENBRENNER and those of us serving on the House Judiciary Committee dedicated ourselves to achieving this end. The additional safeguards that we will agree to today will further enhance the safety and security of the American people, and I enthusiastically support that. It is time, after two extensions and a debate worthy of the high standards of American democracy, that we send the PATRIOT Act to the President for his signature.

We all lived through September 11th. I was here at the Capitol that day. I saw the evil of our enemies written in the smoke rising above the Pentagon. And we are reminded yet today that their desire to do such violence in our homeland and in the homeland of our allies is real.

Since September 11th, we have seen attacks on buses and subway cars in London, attacks on commuter trains in Madrid, hotel bombings in Amman, and nightclub bombings in Bali. Osama bin Laden and Ayman al-Zawahiri have spoken recently in videotapes expressing their desire to bring further terrorist destruction upon America. There is no doubt that we are under an extreme threat each day. However, there also is no doubt about America's determination to protect itself.

Just recently the President recounted how a planned al Qaeda attack on an office tower in Los Angeles was thwarted, thanks in part to the tools provided under the PATRIOT Act. The information sharing provisions of the PATRIOT Act also have enabled investigators to break-up terror cells in Portland, Oregon and Lackawanna, New York. Thwarting terrorist attacks such as these at home is accomplished by the hard work of the men and women in the law enforcement and intelligence communities. But, it also is done by making sure that these brave men and women have available to them the powers necessary to do the job, such as those in the PATRIOT Act.

For that reason, making permanent 14 of the 16 expiring PATRIOT Act provisions is so important. The two remaining provisions, Section 206 which authorizes roving wiretaps used by law enforcement to perform surveillance on terrorists or spies who throwaway their cell phones and change locations frequently and Section 215 which authorizes the FBI to ask the Foreign Intelligence Surveillance Courts to issue an order for business records of terrorists to be used by the FBI in its investigations, are extended for 4 years.

We must equip law enforcement and intelligence officials with the tools necessary for them to protect Americans from terrorist attacks. We also must safeguard the precious civil rights and liberties that make our lives so free and fulfilling. We are doing both today. Madam Speaker, our solemn duty is to protect

Americans from terrorists and safeguard their civil liberties, and today we fulfill that duty by passing this bill and sending the reauthorization of the PATRIOT Act to the President to sign.

Mr. SENSENBRENNER. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. BIGGERT). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 2271.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

STOP COUNTERFEITING IN MANUFACTURED GOODS ACT

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 32) to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. TRAFFICKING IN COUNTERFEIT MARKS.

(a) *SHORT TITLE; FINDINGS.*—

(1) *SHORT TITLE.*—This section may be cited as the "Stop Counterfeiting in Manufactured Goods Act".

(2) *FINDINGS.*—The Congress finds that—

(A) the United States economy is losing millions of dollars in tax revenue and tens of thousands of jobs because of the manufacture, distribution, and sale of counterfeit goods;

(B) the Bureau of Customs and Border Protection estimates that counterfeiting costs the United States \$200 billion annually;

(C) counterfeit automobile parts, including brake pads, cost the auto industry alone billions of dollars in lost sales each year;

(D) counterfeit products have invaded numerous industries, including those producing auto parts, electrical appliances, medicines, tools, toys, office equipment, clothing, and many other products;

(E) ties have been established between counterfeiting and terrorist organizations that use the sale of counterfeit goods to raise and launder money;

(F) ongoing counterfeiting of manufactured goods poses a widespread threat to public health and safety; and

(G) strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.

(b) *TRAFFICKING IN COUNTERFEIT MARKS.*—Section 2320 of title 18, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after "such goods or services" the following: "

or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,".

(2) Subsection (b) is amended to read as follows:

"(b)(1) The following property shall be subject to forfeiture to the United States and no property right shall exist in such property:

"(A) Any article bearing or consisting of a counterfeit mark used in committing a violation of subsection (a).

"(B) Any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

"(2) The provisions of chapter 46 of this title relating to civil forfeitures, including section 983 of this title, shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States, shall order that any forfeited article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

"(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

"(i) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense;

"(ii) any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of the offense; and

"(iii) any article that bears or consists of a counterfeit mark used in committing the offense.

"(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. Notwithstanding section 413(h) of that Act, at the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed.

"(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the mark and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

"(5) The term 'victim', as used in paragraph (4), has the meaning given that term in section 3663A(a)(2)."

(3) Subsection (e)(1) is amended—

(A) by striking subparagraph (A) and inserting the following:

"(A) a spurious mark—

"(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

"(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

"(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case,